

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the U.S. Postal Service on the date shown below with sufficient postage as First Class Mail, in an envelope addressed to: MS Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Dated: February 28, 2007

Signature: 

Paul B. Stephens

Docket No.: 30320/18023  
(PATENT)

MAR 05 2007

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:  
Rajesh Banginwar et al.

Application No.: 10/773,860

Confirmation No.: 7222

Filed: February 6, 2004

Art Unit: 2863

For: METHOD AND APPARATUS FOR  
PROFILING POWER PERFORMANCE OF  
SOFTWARE APPLICATIONS

Examiner: T. S. Lau

**COMMUNICATION REGARDING OCTOBER 12, 2006  
INFORMATION DISCLOSURE STATEMENT**

MS Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Applicant appreciates the notice of allowance mailed January 12, 2007.

In review of the file, it has been noticed that the examiner has not yet mailed an initialed copy of the October 12, 2006 resubmitted information disclosure statement (IDS), citing the PowerScope reference with the publication date. Applicant had previously cited the PowerScope document, but without a publication date listed on the form. Correspondingly, the examiner refused to initial that prior citation. Applicant corrected the citation and inserted the publication date in the October 12, 2006 resubmitted IDS.

Although the examiner mailed no document regarding the October 12, 2006 IDS in the notice of allowance, in reviewing the private PAIR system for this case, applicant's representatives noticed a copy of the October 12, 2006 form PTO/SB/08 in the patent office files. The examiner had crossed out the listing to the PowerScope document and stated there was "no publication data on document." 37 C.F.R. § 1.98(b)(5), however, does not require that the document itself bear the publication date. As the title clearly states, 37 C.F.R. § 1.98(b)(5) is directed to the "content of the information disclosure statement," not the contents of the underlying documents. Section (b)(5) states that each publication listed in an IDS "must be identified by" among other things the date. This section does not require that the document itself bear the publication date, only that the IDS listing for that publication identify the date.

The October 12, 2006 information disclosure statement included form PTO/SB/08 with the date of the PowerScope paper properly listed as 1999. (It is noted that when a publication occurs more than 1 year prior to the application filing date, the month of the publication need not be provided). The requirements of 37 C.F.R. § 1.98(b)(5) and MPEP 609 are clearly met by this listing.

The applicant has given the examiner the best available copy of the PowerScope paper and the information on its publication. The examiner is now asked to confirm that the cited document has been properly considered, and so that the document may be listed on the face of the patent to issue.

This communication is being filed along with the payment of issue fee.

Dated: February 28, 2007

Respectfully submitted,

By 

Paul B. Stephens

Registration No.: 47,970  
MARSHALL, GERSTEIN & BORUN  
233 S. Wacker Drive, Suite 6300  
Sears Tower  
Chicago, Illinois 60606-6357  
(312) 474-6300  
Attorney for Applicant